IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO. 7045 OF 2005

C. N. Udaykumar, Age 40 years,
Occ.: business, R/at
Charekkat, At Post Chalakkudu,
Tal. Inngalakuda, Dist. Trissur,
Kerala State. .. ..Applicant

Versus

The State of Maharashtra.
(At the instance of Kankavli
Police Station, Dist.
Sindhudurg). .. ..Respondent

Shri.A. P. Mundargi with Shri. S. R. Mithare, Advocates, for the Applicant.

Shri. S. S. Pednekar, A.P.P., for the Respondent-State.

CORAM: S. C. DHARMADHIKARI, J.
DATE : NOVEMBER 16, 2005

P. C.

. C. R. No. 61/2005 registered with the Kankavli Police Station, District : Sindhudurg against one Ramshankar Hariram Magar, driver of the vehicle, as well as one Anilkumar Sohanlal Sisodia alleges offences punishable under the Bombay Prohibition Act. The applicant is the owner of the vehicle.

2. The case of the applicant is that the vehicle was booked for transporting a consignment from Mumbai to Kerala State. It appears that the driver as well as the

said Anilkumar, without the knowledge and consent of the applicant, booked a consignment from Mumbai to Goa. Upon apprehending the vehicle near Kankavali, the respondent discovered that chemicals of one Columbia Petro Chemicals Pvt. Ltd. were being transported and delivered to Hindustan Chemicals at Margaon, Goa. The vehicle was seized and the further allegation is that no excise duty was paid on the goods. There were three separate compartments in the vehicle and there was 12,000 litres of spirit mixed with alcohol.

3. There is no reference to the applicant in the report that was made by the concerned Police Officers. It appears that subsequently, the applicant's name was disclosed as the owner of the vehicle by the aforesaid persons, and the Police Party raided his house in Kerala and seized the R.C.Book and other documents. On 20.9.2005, a supplementary report was made wherein the applicant has been shown as Accused No. 3 and offences punishable under sections 420, 465, 467, etc., of the Indian Penal Code have been alleged.

4. The first contention of learned Senior Counsel appearing for the applicant is that as far as these goods are concerned, unless they are found to be **"intoxicant"** within the meaning of the said term as defined under the

Act, the Bombay Prohibition Act itself would be inapplicable. Assuming that the said goods are **"intoxicant"**,all offences are under the Bombay Prohibition Act, and there is no reference to the applicant in so far as these offences are concerned. The applicant has not been connected with the booking of the consignment from Mumbai to Goa. In these circumstances, the applicant is entitled to be protected. He is entitled to be so protected even as far as the supplementary report alleging the offences punishable under the Indian Penal Code are concerned, inasmuch as all documents pertaining to the vehicle, including the R. C. Book, have ben seized and throughout the pendency of the anticipatory bail application before the Sessions Court as well as during the ad-interim protection granted by this Court, the applicant has been reporting to the Police Station.

5. Shri. Pednekar, the learned A.P.P., appearing for the respondent states that the applicant is not a resident of Maharashtra State. He has no permanent abode. Now, it is discovered that the consignment was being transported for being delivered to a company in Goa, which also is a bogus company. The applicant has thus without the necessary permission and authority has been allowing the vehicle to be used for booking and

delivering consignments as the owner. It was his obligation to disclose all details pertaining to the transactions undertaken by his employees. In these circumstances, his ingterrogation will be necessary and, therefore, the application is rejected.

6. Alternatively, the learned A.P.P. submitted that the applicant would not be available at the trial of the offence in question in the absence of any permanent place of residence in the Maharashtra State as well as the local surety. In these circumstances, having perused the material with the assistance of Shri. Pednekar, the learned A.P.P., and considering the fact that the charge is principally for violation of the Bombay Prohibition Act, this is a case where custodial interrogation is not necessary. Even otherwise, in the supplementary report alleging offences of forgery and cheating, on the own showing of the Prosecution, the establishsment of the applicant at Kerala has been raided and all documents have been seized. Even the vehicle is in the custody of the Prosecution. Further, the applicant having not misused the protection, this is a fit case where he deserves to be enlarged on bail in the event of his arrest. However, it would be necessary to impose certain conditions, including the provision of a local surety. This order is passed also because of the fact that I am

informed that the driver as well as the said Anilkumar are already enlarged on bail by the regular Court.

7. .Accordingly, the following order is passed.

(i) In the event of the arrest of the applicant in connection with C. R. No. 61/2005 of Kankavli Police Station, the applicant shall be enlarged on bail subject to furnishing P.R. Bond in the sum of Rs. 25,000/= with one or two sureties in the like amount The sureties will be local sureties.

(ii) The bail is granted subject to condition that the applicant will attend the concerned Police Station on

(iii) The bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investigating Agency. The Applicant shall not tamper with the Prosecution

evidence.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) This order will enure to the benefit of the applicant only till chargesheet is filed. Thereafter he will be free to apply to the appropriate Court for appropriate relief.

(vi) Application is disposed of in above terms.

(vii) The parties to act upon an authenticated copy of this order.

(S. C. Dharmadhikari, J.)

logic:MPR/2005.